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dba Hyatt Regency San Francisco Airport, Jimmy  
Flores, Ron Gray, Tom Phipps and Jose Reyes

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

THROY OTANES,

Plaintiff,

v.

HYATT REGENCY HOTEL  
(BURLINGAME), JIMMY FLORES,  
RON GRAY, TOM PHIPPS, JOSE  
REYES, and DOES ONE through FIFTY,

Defendants.

Case No. CV 07 5936 MHP

**DEFENDANT HYATT CORPORATION'S  
AMENDED ANSWER TO PLAINTIFF'S  
COMPLAINT FOR WRONGFUL  
DISCHARGE ARISING FROM BREACH  
OF CONTRACT, BREACH OF  
COVENANT OF GOOD FAITH & FAIR  
DEALING, RACE-BASED  
DISCRIMINATION, DISCRIMINATION  
BASED ON SEX, AGE, AND SEXUAL  
ORIENTATION, INTENTIONAL  
INFLECTION OF EMOTIONAL  
DISTRESS, AND FAILURE TO PREVENT  
DISCRIMINATION**

Complaint Filed in State Court: May 15, 2007

Defendant Hyatt Corporation dba Hyatt Regency San Francisco Airport ("Defendant Hyatt" or the "Hotel") (erroneously named herein as "Hyatt Regency Hotel (Burlingame)") hereby answers the Complaint for Wrongful Discharge Arising from Breach of Contract, Breach of Covenant of Good Faith and Fair Dealing, Raced-Based Discrimination, Discrimination Based on Age, Sex, Sexual Orientation, Intentional Inflection of Emotional Distress, and Failure to Prevent Discrimination ("Complaint") filed by plaintiff Throy Otanes ("Plaintiff") in the above-captioned matter as follows:

**ANSWER TO PARAGRAPHS ENTITLED "JURISDICTIONAL ALLEGATIONS"**

1. Answering Paragraph 1 of the Complaint, Defendant Hyatt admits that the Hyatt Regency San Francisco Airport hotel does business in the County of San Mateo, State of California.

2. Answering Paragraph 2 of the Complaint, Defendant Hyatt admits that Jimmy Flores, Ron Gray, Tom Phipps, and Jose Reyes are individuals and employees of Hyatt Corporation dba Hyatt Regency San Francisco Airport.

3. Defendant Hyatt has no information or belief on the subject sufficient to enable it to answer the allegations contained in Paragraph 3 of the Complaint, and basing its denial on that ground, denies generally and specifically each and every allegation contained in said paragraph.

4. Defendant Hyatt denies generally and specifically each and every allegation contained in Paragraph 4 of the Complaint, except that Defendant Hyatt asserts that Plaintiff was a union employee covered by a written collective bargaining agreement between International Union of Operating Engineers, AFL-CIO, Stationary Engineers, Local 39 and the Hyatt Regency San Francisco Airport ("the hotel"), which written agreement covered the terms and conditions of Plaintiff's employment in San Mateo County, California.

5. Defendant Hyatt denies generally and specifically each and every allegation contained in Paragraph 5 of the Complaint.

6. Defendant Hyatt has no information or belief on the subject sufficient to enable it to answer the allegations contained in Paragraph 6 of the Complaint, and basing its denial on that ground, denies generally and specifically each and every allegation contained in said paragraph.

7. Defendant Hyatt has no information or belief on the subject sufficient to enable it to answer the allegations contained in Paragraph 7 of the Complaint, and basing its denial on that ground, denies generally and specifically each and every allegation contained in said paragraph.

**ANSWER TO PARAGRAPHS ENTITLED "GENERAL ALLEGATIONS"**

8. Answering Paragraph 8 of the Complaint wherein Plaintiff incorporates Paragraphs 1 through 7 of the Complaint, Defendant Hyatt realleges and hereby incorporates by this reference its responses to said paragraphs as though fully set forth herein.

1           9.       Answering Paragraph 9 of the Complaint, Defendant Hyatt admits that Plaintiff  
2 was hired by the Hyatt Regency San Francisco Airport on February 7, 1997 as a Houseperson and  
3 later became a Doorperson in August 1999.

4           10.      Defendant Hyatt has no information or belief on the subject sufficient to enable it  
5 to answer the allegations contained in Paragraph 10 of the Complaint, and basing its denial on  
6 that ground, denies generally and specifically each and every allegation contained in said  
7 paragraph, except that Defendant Hyatt admits that Plaintiff is female and that she was openly  
8 gay and her sexual orientation was known to many co-workers.

9           11.      Defendant Hyatt has no information or belief on the subject sufficient to enable it  
10 to answer the allegations contained in Paragraph 11 of the Complaint, and basing its denial on  
11 that ground, denies generally and specifically each and every allegation contained in said  
12 paragraph, except that Defendant Hyatt admits that Plaintiff began work as a utility engineer at  
13 the hotel in October 1999.

14          12.      Defendant Hyatt has no information or belief on the subject sufficient to enable it  
15 to answer the allegations contained in Paragraph 12 of the Complaint, and basing its denial on  
16 that ground, denies generally and specifically each and every allegation contained in said  
17 paragraph, except that Defendant Hyatt admits that as a utility engineer, Plaintiff was tasked to do  
18 various minor repair work and minor electrical repair work. However, Defendant Hyatt denies  
19 that minor electrical work does not include lockout/tagout electrical work, and specifically alleges  
20 that Plaintiff was trained many times in lockout/tagout procedures at the hotel, as were other  
21 utility engineers.

22          13.      Defendant Hyatt has no information or belief on the subject sufficient to enable it  
23 to answer the allegations contained in Paragraph 13 of the Complaint, and basing its denial on  
24 that ground, denies generally and specifically each and every allegation contained in said  
25 paragraph, except that Defendant Hyatt admits that when Plaintiff worked as a utility engineer at  
26 the hotel, she initially was assigned Unit 8 work (rooms preventative maintenance), but at her  
27 request, performed both Unit 7 and Unit 8 work, which are both utility engineer assignments.

28          14.      Defendant Hyatt denies specifically and generally each and every allegation

1 contained in paragraph 14 of the Complaint, except that Defendant Hyatt admits that Plaintiff was  
2 initially doing Unit 8 work until she requested to be assigned to Unit 7 work in 2002. Defendant  
3 Hyatt denies that Plaintiff did no Unit 7 work prior to 2002. Defendant Hyatt denies that Plaintiff  
4 was doing her work satisfactorily and alleges that Plaintiff frequently requested help from  
5 Individual Defendants Tom Phipps, Jimmy Flores, Jose Reyes (the "Individual Defendants") and  
6 other employees when she was performing her work as a utility engineer.

7 15. Defendant Hyatt denies generally and specifically each and every allegation  
8 contained in Paragraph 15 on page 4 of the Complaint, except that Defendant Hyatt admits that  
9 Individual Defendant Jose Reyes is a utility engineer. Individual Defendants Tom Phipps and  
10 Ron Gray are maintenance engineers, and Individual Defendant Jimmy Flores is a painter.  
11 Defendant Hyatt also admits that in 2005, Mark Hergert was promoted to Assistant Director of  
12 Engineering and assumed supervisory responsibilities in the hotel's engineering department.

13 16. Defendant Hyatt has no information or belief on the subject sufficient to enable it  
14 to answer the allegations contained in Paragraph 16 on page 4 of the Complaint, and basing its  
15 denial on that ground, denies generally and specifically each and every allegation contained in  
16 said paragraph, except that Defendant Hyatt admits that Plaintiff made a complaint in 2001  
17 regarding the conduct of Jimmy Flores.

18 17. Defendant Hyatt denies generally and specifically each and every allegation  
19 contained in Paragraph 17 on page 4 of the Complaint, except that Defendant Hyatt admits that  
20 in 2001, Plaintiff made a complaint about Individual Defendant Jimmy Flores grabbing his crotch  
21 and swiveling his hips in her presence, and complained that on one occasion, he put his arms  
22 around her from behind, thrust his hips and made grunting noises. Mr. Flores denied Plaintiff's  
23 allegations, except that he admitted putting his arm around her shoulder and joking with her.  
24 There were no witnesses that corroborated Plaintiff's complaint. Plaintiff's complaint was  
25 promptly addressed, a prompt and thorough investigation of Plaintiff's allegations was conducted,  
26 and appropriate corrective action was taken by the Hotel. Mr. Flores was counseled, was re-  
27 issued another copy of Hyatt's Policy Against Harassment, and was warned of the ramifications if  
28 the policy was violated in the future. Mr. Flores also apologized to Plaintiff, and Plaintiff shook

1 Mr. Flores' hand and said that she had "no hard feelings," and wanted things to go "back to  
2 normal." Plaintiff was asked by Human Resources to report any further issues as soon as  
3 possible. After October 2001, however, Plaintiff made no further complaints of any alleged  
4 sexual harassment of her (or other inappropriate conduct of any kind) by Mr. Flores. Plaintiff did  
5 complain to the Hotel's Human Resources department in 2002 alleging that two other engineering  
6 employees, "Al" and "Arnel", were coming in to guest rooms in which she was working,  
7 borrowing tools, gossiping, annoying her, telling her that Unit 7 work was very hard, and asking  
8 her if Individual Defendant Jimmy Flores (a painter), was doing his job on Sundays (a day that  
9 she worked with Mr. Flores). She also complained to Human Resources that Mr. Flores  
10 sometimes talked to her as well, telling her that Unit 7 work was harder than Unit 8 work.  
11 However, she also specifically told Human Resources the following in December 2002 regarding  
12 Mr. Flores: "I don't have a problem with Jimmy"; "Jimmy is doing his best to teach me"; "He is  
13 very nice"; and "My relationship with Jimmy and Ron is very good – they are supportive and  
14 professional. Even after what happened with me and Jimmy, we still talk. He advises me."  
15 Defendant Hyatt has no information or belief on the subject sufficient to enable it to answer the  
16 allegation contained in the last sentence of Paragraph 17 on page 4 of the Complaint, and basing  
17 its denial on that ground, denies generally and specifically each and every allegation contained in  
18 said sentence.

19 18. Defendant Hyatt has no information or belief on the subject sufficient to enable it  
20 to answer the allegations contained in Paragraph 18 on page 5 of the Complaint, and basing its  
21 denial on that ground, denies generally and specifically each and every allegation contained in  
22 said paragraph, and Defendant Hyatt further asserts that Plaintiff subsequently told Human  
23 Resources in December 2002: "I don't have a problem with Jimmy"; "Jimmy is doing his best to  
24 teach me"; "He is very nice"; and "My relationship with Jimmy and Ron is very good – they are  
25 supportive and professional. Even after what happened with me and Jimmy, we still talk. He  
26 advises me."

27 19. Defendant Hyatt has no information or belief on the subject sufficient to enable it  
28 to answer the allegations contained in Paragraph 19 on page 5 of the Complaint, and basing its

1 denial on that ground, denies generally and specifically each and every allegation contained in  
2 said paragraph. Defendant Hyatt further denies specifically and generally that Individual  
3 Defendant Jimmy Flores was in Unit 7.

4 15<sub>2</sub>. Defendant Hyatt has no information or belief on the subject sufficient to enable it  
5 to answer the allegations contained in Paragraph 15<sub>2</sub> (the second paragraph 15 contained in the  
6 Complaint) on page 5 of the Complaint, and basing its denial on that ground, denies generally and  
7 specifically each and every allegation contained in said paragraph, except that Defendant Hyatt  
8 admits that at some point in 2002, at her specific request, Plaintiff was assigned Unit 7 work  
9 because she stated that she should be assigned Unit 7 work due to her seniority.

10 16<sub>2</sub>. Defendant Hyatt has no information or belief on the subject sufficient to enable it  
11 to answer the allegations contained in Paragraph 16<sub>2</sub> (the second paragraph 16 contained in the  
12 Complaint) on page 5 of the Complaint, and basing its denial on that ground, denies generally and  
13 specifically each and every allegation contained in said paragraph, except that Defendant Hyatt  
14 admits that at some point, Plaintiff may have been the only female utility engineer at the hotel;  
15 however, Defendant Hyatt also alleges that there previously had been another female utility  
16 engineer at the hotel named Jennifer Schaff, who subsequently became an apprentice engineer,  
17 and who then subsequently was promoted to maintenance engineer, then was promoted to  
18 Assistant Director of Engineering (supervising both Individual Defendants and Plaintiff), and  
19 then was promoted to Director of Engineering at a different Hyatt hotel.

20 17<sub>2</sub>. Defendant Hyatt has no information or belief on the subject sufficient to enable it  
21 to answer the allegations contained in Paragraph 17<sub>2</sub> (the second paragraph 17 contained in the  
22 Complaint) on page 5 of the Complaint, and basing its denial on that ground, denies generally and  
23 specifically each and every allegation contained in said paragraph, except that Defendant Hyatt  
24 alleges that Plaintiff would have known prior to her assignment to Unit 7 work whether the utility  
25 engineers performing Unit 7 work were all males, since Plaintiff knew all of the engineers in the  
26 Engineering Department. Defendant Hyatt further specifically denies that Tom Phipps, Ron Gray  
27 and Jimmy Flores performed Unit 7 work.

28 18<sub>2</sub>. Defendant Hyatt has no information or belief on the subject sufficient to enable it

1 to answer the allegations contained in Paragraph 18<sub>2</sub> (the second paragraph 18 contained in the  
2 Complaint) on pages 5-6 of the Complaint, and basing its denial on that ground, denies generally  
3 and specifically each and every allegation contained in said paragraph, except that Defendant  
4 Hyatt denies that Plaintiff was not given any training for Unit 7 work, inasmuch as all engineers  
5 in the hotel received extensive training, including Plaintiff, and Plaintiff also was given additional  
6 individual training due to her performance problems.

7 19<sub>2</sub>. Defendant Hyatt has no information or belief on the subject sufficient to enable it  
8 to answer the allegations contained in Paragraph 19<sub>2</sub> (the second paragraph 19 contained in the  
9 Complaint) on page 6 of the Complaint, and basing its denial on that ground, denies generally and  
10 specifically each and every allegation contained in said paragraph, except that Defendant Hyatt  
11 also specifically denies that Plaintiff was “learning on the job” in 2002, as she already should  
12 have had the ability to perform Unit 7 work, having worked as a utility engineer for three years.  
13 Defendant Hyatt also admits that Plaintiff received a poor performance evaluation in December  
14 2003.

15 20. Defendant Hyatt has no information or belief on the subject sufficient to enable it  
16 to answer the allegations contained in Paragraph 20 of the Complaint, and basing its denial on  
17 that ground, denies generally and specifically each and every allegation contained in said  
18 paragraph, except that Defendant Hyatt admits that Larry Builta, then the Hotel’s Director of  
19 Engineering, had conversations with Plaintiff regarding her performance problems, and that  
20 Plaintiff was unhappy with the demands of Unit 7 utility engineering work, which can be more  
21 demanding than Unit 8 work, as it requires prompt responses to guest requests as opposed to  
22 merely preventive maintenance work.

23 21. Defendant Hyatt has no information or belief on the subject sufficient to enable it  
24 to answer the allegations contained in Paragraph 21 of the Complaint, and basing its denial on  
25 that ground, denies generally and specifically each and every allegation contained in said  
26 paragraph, except that Defendant Hyatt admits that Plaintiff was put back on Unit 8 Rooms  
27 Preventative Maintenance in August 2003.

28 22. Defendant Hyatt has no information or belief on the subject sufficient to enable it



1 to answer the allegations contained in Paragraph 22 of the Complaint, and basing its denial on  
2 that ground, denies generally and specifically each and every allegation contained in said  
3 paragraph, except that Defendant Hyatt admits that Plaintiff began performing Unit 7 Guest  
4 Requests two days per week in 2005 based on the hotel's operational needs.

5 23. Defendant Hyatt has no information or belief on the subject sufficient to enable it  
6 to answer the allegations contained in Paragraph 23 of the Complaint, and basing its denial on  
7 that ground, denies generally and specifically each and every allegation contained in said  
8 paragraph, except that Defendant Hyatt also specifically denies that Plaintiff was "enduring the  
9 problems of training herself on the job," because Plaintiff attended extensive training for  
10 engineering work in 2005. Defendant Hyatt further responds as follows.

11 23(a). Defendant Hyatt has no information or belief on the subject sufficient to enable it  
12 to answer the allegations contained in Paragraph 23(a) of the Complaint, and basing its denial on  
13 that ground, denies generally and specifically each and every allegation contained in said  
14 paragraph, and further asserts that Plaintiff never made any such allegations after 2001, and that  
15 in December 2002, Plaintiff specifically advised Human Resources: "I don't have a problem with  
16 Jimmy"; "Jimmy is doing his best to teach me"; "He is very nice"; and "My relationship with  
17 Jimmy and Ron is very good – they are supportive and professional. Even after what happened  
18 with me and Jimmy, we still talk. He advises me." .

19 23(b). Defendant Hyatt has no information or belief on the subject sufficient to enable it  
20 to answer the allegations contained in Paragraph 23(b) of the Complaint, and basing its denial on  
21 that ground, denies generally and specifically each and every allegation contained in said  
22 paragraph, and further asserts that Plaintiff never made any such allegations at any time during  
23 her employment.

24 23(c). Defendant Hyatt has no information or belief on the subject sufficient to enable it  
25 to answer the allegations contained in Paragraph 23(c) of the Complaint, and basing its denial on  
26 that ground, denies generally and specifically each and every allegation contained in said  
27 paragraph, and further asserts that Plaintiff never made any such allegations at any time during  
28 her employment.



1           23(d). Defendant Hyatt has no information or belief on the subject sufficient to enable it  
2 to answer the allegations contained in Paragraph 23(d) of the Complaint, and basing its denial on  
3 that ground, denies generally and specifically each and every allegation contained in said  
4 paragraph, except that Defendant Hyatt admits that Mark Hergert was promoted to Assistant  
5 Director of Engineering in 2005.

6           24. Defendant Hyatt has no information or belief on the subject sufficient to enable it  
7 to answer the allegations contained in Paragraph 24 of the Complaint, and basing its denial on  
8 that ground, denies generally and specifically each and every allegation contained in said  
9 paragraph, except that Defendant Hyatt admits that Plaintiff was assigned to perform a plumbing  
10 repair job on April 18, 2005 as part of her job responsibilities as a utility engineer, and that  
11 although Plaintiff was assigned the task, Individual Defendant Tom Phipps completed the  
12 plumbing repair job for her after Plaintiff called on her radio for assistance.

13           25. Defendant Hyatt denies generally and specifically each and every allegation  
14 contained in Paragraph 25 of the Complaint, except that Defendant Hyatt admits that Plaintiff was  
15 given a Final Written Warning and was suspended for five days by the hotel in April 2005 in lieu  
16 of termination for failing to perform work satisfactorily, safely and effectively.

17           26. Defendant denies generally and specifically each and every allegation contained in  
18 Paragraph 26 of the Complaint, except that Hyatt admits Plaintiff was assigned on May  
19 16, 2006 to respond to a guest call regarding a broken hair dryer, that she called for assistance  
20 regarding the call, that Individual Defendant Ron Gray assisted Plaintiff in connection with the  
21 minor electrical assignment of checking on the electrical receptacle in the guest room, showed  
22 Plaintiff how to use her voltmeter, showed Plaintiff the simple steps to replace the receptacle, and  
23 reminded her to do the necessary lockout/tagout procedure, and that Plaintiff then confirmed that  
24 she was able to complete the job; however, Plaintiff then was not able to complete the job, failed  
25 to perform normal lockout/tagout procedures, and subsequently another utility engineer had to  
26 complete the job for her after her shift ended. Defendant also admits that Plaintiff was suspended  
27 pending investigation on May 23, 2005.

28           27. Defendant denies generally and specifically each and every allegation contained in

1 Paragraph 27 of the Complaint, except that Defendant Hyatt admits Plaintiff was called to Human  
2 Resources on May 23, 2005.

3 28. Defendant Hyatt admits that Plaintiff was discharged from her employment on  
4 May 24, 2005.

5 29. Defendant Hyatt denies generally and specifically each and every allegation  
6 contained in Paragraph 29 of the Complaint.

7 30. Defendant Hyatt denies generally and specifically each and every allegation  
8 contained in Paragraph 30 of the Complaint, and further asserts that in December 2002, Plaintiff  
9 specifically told Human Resources: “I don’t have a problem with Jimmy”; “Jimmy is doing his  
10 best to teach me”; “He is very nice”; and “My relationship with Jimmy and Ron is very good –  
11 they are supportive and professional. Even after what happened with me and Jimmy, we still talk.  
12 He advises me.”

### 13 **ANSWER TO FIRST CAUSE OF ACTION**

14 (Breach of Contract) (Against Defendant Hyatt only)

15 31. Answering Paragraph 31 of the Complaint wherein Plaintiff incorporates  
16 Paragraphs 1 through 30 (including the duplicative-numbered paragraphs) of the Complaint,  
17 Defendant realleges and hereby incorporates by this reference its responses to said paragraphs as  
18 though fully set forth herein.

19 32. Defendant Hyatt admits that Plaintiff was hired by the Hyatt Regency San  
20 Francisco Airport on February 7, 1997 and was terminated from her employment on May 24,  
21 2005. Defendant Hyatt further asserts that Plaintiff’s breach of contract cause of action is  
22 preempted by federal labor law.

23 33. Defendant Hyatt denies generally and specifically each and every allegation  
24 contained in Paragraph 33 of the Complaint, except that Defendant Hyatt admits that Plaintiff  
25 received salary increases during her employment as a utility engineer pursuant to the required  
26 wage increases mandated under the Local 39 collective bargaining agreement which were in no  
27 way based upon performance. Defendant specifically denies that Plaintiff was not given training  
28 regarding Unit 7 work, inasmuch as all engineers in the hotel received extensive training,

1 including Plaintiff. Defendant Hyatt further asserts that Plaintiff's breach of contract cause of  
2 action is preempted by federal labor law.

3 34. Defendant Hyatt denies generally and specifically each and every allegation  
4 contained in Paragraph 34 of the Complaint, except that Defendant Hyatt alleges that Plaintiff  
5 was a union employee covered by a written collective bargaining agreement between  
6 International Union of Operating Engineers, AFL-CIO, Stationary Engineers, Local 39 and the  
7 Hyatt Regency San Francisco Airport ("the hotel"), which written agreement covered the terms  
8 and conditions of Plaintiff's employment. Defendant Hyatt further asserts that Plaintiff's breach  
9 of contract cause of action is preempted by federal labor law.

10 35. Defendant Hyatt denies generally and specifically each and every allegation  
11 contained in Paragraph 35 of the Complaint, and Defendant Hyatt asserts that an "adequate and  
12 effective investigation" was conducted by the Hotel. Defendant Hyatt further asserts that  
13 Plaintiff's breach of contract cause of action is preempted by federal labor law.

14 36. Defendant Hyatt denies generally and specifically each and every allegation  
15 contained in Paragraph 36 of the Complaint. Defendant Hyatt further asserts that Plaintiff's  
16 breach of contract cause of action is preempted by federal labor law.

17 37. Defendant Hyatt denies generally and specifically each and every allegation  
18 contained in Paragraph 37 of the Complaint. Defendant Hyatt further asserts that Plaintiff's  
19 breach of contract cause of action is preempted by federal labor law.

20 38. Defendant Hyatt denies generally and specifically each and every allegation  
21 contained in Paragraph 38 of the Complaint. Defendant Hyatt further asserts that Plaintiff's  
22 breach of contract cause of action is preempted by federal labor law.

### 23 **ANSWER TO SECOND CAUSE OF ACTION**

24 (Breach of Covenant of Good Faith and Fair Dealing) (Against Defendant Hyatt only)

25 39. Answering Paragraph 39 of the Complaint wherein Plaintiff incorporates  
26 Paragraphs 1 through 38 of the Complaint (including the duplicative-numbered paragraphs),  
27 Defendant Hyatt realleges and hereby incorporates by this reference its responses to said  
28 paragraphs as though fully set forth herein.

1           40. Defendant Hyatt denies generally and specifically each and every allegation  
 2 contained in Paragraph 40 of the Complaint, except that Defendant Hyatt alleges that Plaintiff  
 3 was a union employee covered by a written collective bargaining agreement between  
 4 International Union of Operating Engineers, AFL-CIO, Stationary Engineers, Local 39 and the  
 5 Hyatt Regency San Francisco Airport ("the hotel"), which written agreement covered the terms  
 6 and conditions of Plaintiff's employment. Defendant Hyatt further asserts that Plaintiff's breach  
 7 of the covenant of good faith and fair dealing cause of action is preempted by federal labor law.

8           41. Defendant Hyatt denies generally and specifically each and every allegation  
 9 contained in Paragraph 41 of the Complaint. Defendant Hyatt further asserts that Plaintiff's  
 10 breach of the covenant of good faith and fair dealing cause of action is preempted by federal labor  
 11 law.

12           42. Defendant Hyatt denies generally and specifically each and every allegation  
 13 contained in Paragraph 42 of the Complaint. Defendant Hyatt further asserts that Plaintiff's  
 14 breach of the covenant of good faith and fair dealing cause of action is preempted by federal labor  
 15 law.

16           43. Defendant Hyatt denies generally and specifically each and every allegation  
 17 contained in Paragraph 43 of the Complaint. Defendant Hyatt further asserts that Plaintiff's  
 18 breach of the covenant of good faith and fair dealing cause of action is preempted by federal labor  
 19 law.

20           44. Defendant Hyatt denies generally and specifically each and every allegation  
 21 contained in Paragraph 44 of the Complaint. Defendant Hyatt further asserts that Plaintiff's  
 22 breach of the covenant of good faith and fair dealing cause of action is preempted by federal labor  
 23 law.

24                           **ANSWER TO THIRD CAUSE OF ACTION**

25   (Discrimination)

26                           **ANSWER TO COUNT 1**

27   (Race-Based Discrimination)

28           45. Answering Paragraph 45 of the Complaint wherein Plaintiff incorporates

1 Paragraphs 1 through 44 of the Complaint (including the duplicative-numbered paragraphs),  
2 Defendant Hyatt realleges and hereby incorporates by this reference its responses to said  
3 paragraphs as though fully set forth herein.

4 46. Defendant Hyatt has no information or belief on the subject sufficient to enable it  
5 to answer the allegations contained in Paragraph 46 of the Complaint, and basing its denial on  
6 that ground, denies generally and specifically each and every allegation contained in said  
7 paragraph, except that Defendant Hyatt asserts that no response is required to the first sentence of  
8 Paragraph 46 of the Complaint.

9 47. Defendant Hyatt denies generally and specifically each and every allegation  
10 contained in Paragraph 47 of the Complaint, except that Defendant Hyatt admits that Plaintiff's  
11 employment was terminated on May 24, 2005. Defendant Hyatt also specifically denies that  
12 Plaintiff was "denied her right to a thorough investigation" and denies that Plaintiff was  
13 "subjected to different terms, conditions and privileges of employment than those to which  
14 Defendant subjected similarly situated employees, on account of her race and national origin."

15 48. Defendant Hyatt denies generally and specifically each and every allegation  
16 contained in Paragraph 48 of the Complaint.

17 49. Defendant Hyatt denies generally and specifically each and every allegation  
18 contained in Paragraph 49 of the Complaint.

19 50. Defendant Hyatt denies generally and specifically each and every allegation  
20 contained in Paragraph 50 of the Complaint. Defendant Hyatt further asserts that any allegations  
21 regarding harassment or hostile work environment are barred because Plaintiff failed to exhaust  
22 her administrative remedies with respect to any such allegations.

23 51. Defendant Hyatt denies generally and specifically each and every allegation  
24 contained in Paragraph 51 of the Complaint. Defendant Hyatt further asserts that any allegations  
25 regarding harassment or hostile work environment are barred because Plaintiff failed to exhaust  
26 her administrative remedies with respect to any such allegations.

27 52. Defendant Hyatt has no information or belief on the subject sufficient to enable it  
28 to answer the allegations contained in Paragraph 52 of the Complaint, and basing its denial on

1 that ground, denies generally and specifically each and every allegation contained in said  
2 paragraph, except that Defendant Hyatt admits that Plaintiff filed a complaint with the  
3 Department of Fair Employment & Housing on May 16, 2006 alleging that she was fired because  
4 of her sex, age, race/color, national origin/ancestry, and sexual orientation. Defendant Hyatt  
5 asserts that any allegations regarding harassment or hostile work environment are barred because  
6 Plaintiff failed to exhaust her administrative remedies with respect to any such allegations.

7 53. Defendant Hyatt denies generally and specifically each and every allegation  
8 contained in Paragraph 53 of the Complaint.

9 54. Defendant Hyatt denies generally and specifically each and every allegation  
10 contained in Paragraph 54 of the Complaint.

11 55. Defendant Hyatt denies generally and specifically each and every allegation  
12 contained in Paragraph 55 of the Complaint.

13 **ANSWER TO COUNT 2**

14 (Age-Based Discrimination)

15 56. Answering Paragraph 56 of the Complaint wherein Plaintiff incorporates  
16 Paragraphs 1 through 55 of the Complaint (including the duplicative-numbered paragraphs),  
17 Defendant Hyatt realleges and hereby incorporates by this reference its responses to said  
18 paragraphs as though fully set forth herein.

19 57. Defendant Hyatt has no information or belief on the subject sufficient to enable it  
20 to answer the allegations contained in Paragraph 57 of the Complaint, and basing its denial on  
21 that ground, denies generally and specifically each and every allegation contained in said  
22 paragraph, except that Defendant Hyatt asserts that no response is required to the first sentence of  
23 Paragraph 57 of the Complaint.

24 58. Defendant Hyatt denies generally and specifically each and every allegation  
25 contained in Paragraph 58 of the Complaint, except that Defendant Hyatt admits that Plaintiff's  
26 employment was terminated on May 24, 2005. Defendant Hyatt also specifically denies that  
27 Plaintiff was "denied her right to a thorough investigation" and denies that Plaintiff was  
28 "subjected to different terms, conditions and privileges of employment than those to which

1 Defendant subjected similarly situated employees, on account of her age.”

2 59. Defendant Hyatt denies generally and specifically each and every allegation  
3 contained in Paragraph 59 of the Complaint.

4 60. Defendant Hyatt denies generally and specifically each and every allegation  
5 contained in Paragraph 60 of the Complaint. Defendant Hyatt further asserts that any allegations  
6 regarding harassment or hostile work environment are barred because Plaintiff failed to exhaust  
7 her administrative remedies with respect to any such allegations.

8 61. Defendant Hyatt denies generally and specifically each and every allegation  
9 contained in Paragraph 61 of the Complaint. Defendant Hyatt asserts that any allegations  
10 regarding harassment or hostile work environment are barred because Plaintiff failed to exhaust  
11 her administrative remedies with respect to any such allegations.

12 62. Defendant Hyatt denies generally and specifically each and every allegation  
13 contained in Paragraph 62 of the Complaint. Defendant Hyatt asserts that any allegations  
14 regarding harassment or hostile work environment are barred because Plaintiff failed to exhaust  
15 her administrative remedies with respect to any such allegations.

16 63. Defendant Hyatt has no information or belief on the subject sufficient to enable it  
17 to answer the allegations contained in Paragraph 63 of the Complaint, and basing its denial on  
18 that ground, denies generally and specifically each and every allegation contained in said  
19 paragraph, except that Defendant Hyatt admits that Plaintiff filed a complaint with the  
20 Department of Fair Employment & Housing on May 16, 2006 alleging that she was fired because  
21 of her sex, age, race/color, national origin/ancestry, and sexual orientation. Defendant Hyatt  
22 further asserts that any allegations regarding harassment or hostile work environment are barred  
23 because Plaintiff failed to exhaust her administrative remedies with respect to any such  
24 allegations.

25 64. Defendant Hyatt denies generally and specifically each and every allegation  
26 contained in Paragraph 64 of the Complaint.

27 65. Defendant Hyatt denies generally and specifically each and every allegation  
28 contained in Paragraph 65 of the Complaint.



66. Defendant Hyatt denies generally and specifically each and every allegation contained in Paragraph 66 of the Complaint.

### **ANSWER TO COUNT 3**

(Discrimination Based on Sex)

67. Answering Paragraph 67 of the Complaint wherein Plaintiff incorporates Paragraphs 1 through 66 of the Complaint (including the duplicative-numbered paragraphs), Defendant Hyatt realleges and hereby incorporates by this reference its responses to said paragraphs as though fully set forth herein.

68. Defendant Hyatt has no information or belief on the subject sufficient to enable it to answer the allegations contained in Paragraph 68 of the Complaint, and basing its denial on that ground, denies generally and specifically each and every allegation contained in said paragraph, except that Defendant Hyatt asserts that no response is required to the first sentence of Paragraph 68 of the Complaint. Defendant Hyatt also admits that Plaintiff is a female.

69. Defendant Hyatt denies generally and specifically each and every allegation contained in Paragraph 69 of the Complaint, except that Defendant Hyatt admits that Plaintiff's employment was terminated on May 24, 2005. Defendant Hyatt also specifically denies that Plaintiff was "denied her right to a thorough investigation" and denies that Plaintiff was "subjected to different terms, conditions and privileges of employment than those to which Defendant subjected similarly situated employees, on account of her sex."

70. Defendant Hyatt denies generally and specifically each and every allegation contained in Paragraph 70 of the Complaint.

71. Defendant Hyatt has no information or belief on the subject sufficient to enable it to answer the allegations contained in Paragraph 71 of the Complaint, and basing its denial on that ground, denies generally and specifically each and every allegation contained in said paragraph, and further asserts that Plaintiff never made any such allegations at any time during her employment. Defendant Hyatt also asserts that any allegations regarding harassment or hostile work environment are barred because Plaintiff failed to exhaust her administrative remedies with respect to any such allegations.

1           72. Defendant Hyatt denies generally and specifically each and every allegation  
2 contained in Paragraph 72 of the Complaint. Defendant Hyatt further asserts that any allegations  
3 regarding harassment or hostile work environment are barred because Plaintiff failed to exhaust  
4 her administrative remedies with respect to any such allegations.

5           73. Defendant Hyatt denies generally and specifically each and every allegation  
6 contained in Paragraph 73 of the Complaint. Defendant Hyatt further asserts that any allegations  
7 regarding harassment or hostile work environment are barred because Plaintiff failed to exhaust  
8 her administrative remedies with respect to any such allegations.

9           74. Defendant Hyatt denies generally and specifically each and every allegation  
10 contained in Paragraph 74 of the Complaint. Defendant Hyatt further asserts that any allegations  
11 regarding harassment or hostile work environment are barred because Plaintiff failed to exhaust  
12 her administrative remedies with respect to any such allegations.

13           75. Defendant Hyatt has no information or belief on the subject sufficient to enable it  
14 to answer the allegations contained in Paragraph 75 of the Complaint, and basing its denial on  
15 that ground, denies generally and specifically each and every allegation contained in said  
16 paragraph, except that Defendant Hyatt admits that Plaintiff filed a complaint with the  
17 Department of Fair Employment & Housing on May 16, 2006 alleging that she was fired because  
18 of her sex, age, race/color, national origin/ancestry, and sexual orientation. Defendant Hyatt  
19 further asserts that any allegations regarding harassment or hostile work environment are barred  
20 because Plaintiff failed to exhaust her administrative remedies with respect to any such  
21 allegations.

22           76. Defendant Hyatt denies generally and specifically each and every allegation  
23 contained in Paragraph 76 of the Complaint.

24           77. Defendant Hyatt denies generally and specifically each and every allegation  
25 contained in Paragraph 77 of the Complaint.

26           78. Defendant Hyatt denies generally and specifically each and every allegation  
27 contained in Paragraph 78 of the Complaint.  
28

**ANSWER TO COUNT 4**

(Discrimination Based on Sexual Orientation)

79. Answering Paragraph 79 of the Complaint wherein Plaintiff incorporates Paragraphs 1 through 78 of the Complaint (including the duplicative-numbered paragraphs), Defendant Hyatt realleges and hereby incorporates by this reference its responses to said paragraphs as though fully set forth herein.

80. Defendant Hyatt has no information or belief on the subject sufficient to enable it to answer the allegations contained in Paragraph 80 of the Complaint, and basing its denial on that ground, denies generally and specifically each and every allegation contained in said paragraph, except that Defendant Hyatt asserts that no response is required to the first sentence of Paragraph 80 of the Complaint. Defendant Hyatt also admits that Plaintiff is female, and that she stated to co-workers that she was a lesbian.

81. Defendant Hyatt denies generally and specifically each and every allegation contained in Paragraph 81 of the Complaint, except that Defendant Hyatt admits that Plaintiff's employment was terminated on May 24, 2005. Defendant Hyatt also specifically denies that Plaintiff was "denied her right to a thorough investigation" and denies that Plaintiff was "subjected to different terms, conditions and privileges of employment than those to which Defendant subjected similarly situated employees, on account of her sex and/or her sexual orientation."

82. Defendant Hyatt denies generally and specifically each and every allegation contained in Paragraph 82 of the Complaint.

83. Defendant Hyatt has no information or belief on the subject sufficient to enable it to answer the allegations contained in Paragraph 83 of the Complaint, and basing its denial on that ground, denies generally and specifically each and every allegation contained in said paragraph, and further asserts that Plaintiff never made any such allegations at any time during her employment. Defendant Hyatt also asserts that any allegations regarding harassment or hostile work environment are barred because Plaintiff failed to exhaust her administrative remedies with respect to any such allegations.

1           84. Defendant Hyatt denies generally and specifically each and every allegation  
2 contained in Paragraph 84 of the Complaint. Defendant Hyatt asserts that any allegations  
3 regarding harassment or hostile work environment are barred because Plaintiff failed to exhaust  
4 her administrative remedies with respect to any such allegations.

5           85. Defendant Hyatt denies generally and specifically each and every allegation  
6 contained in Paragraph 85 of the Complaint. Defendant Hyatt asserts that any allegations  
7 regarding harassment or hostile work environment are barred because Plaintiff failed to exhaust  
8 her administrative remedies with respect to any such allegations.

9           86. Defendant Hyatt denies generally and specifically each and every allegation  
10 contained in Paragraph 86 of the Complaint. Defendant Hyatt asserts that any allegations  
11 regarding harassment or hostile work environment are barred because Plaintiff failed to exhaust  
12 her administrative remedies with respect to any such allegations.

13           87. Defendant Hyatt has no information or belief on the subject sufficient to enable it  
14 to answer the allegations contained in Paragraph 87 of the Complaint, and basing its denial on  
15 that ground, denies generally and specifically each and every allegation contained in said  
16 paragraph, except that Defendant Hyatt admits that Plaintiff filed a complaint with the  
17 Department of Fair Employment & Housing on May 16, 2006 alleging that she was fired because  
18 of her sex, age, race/color, national origin/ancestry, and sexual orientation. Defendant Hyatt  
19 asserts that any allegations regarding harassment or hostile work environment are barred because  
20 Plaintiff failed to exhaust her administrative remedies with respect to any such allegations.

21           88. Defendant Hyatt denies generally and specifically each and every allegation  
22 contained in Paragraph 88 of the Complaint.

23           89. Defendant Hyatt denies generally and specifically each and every allegation  
24 contained in Paragraph 89 of the Complaint.

25           90. Defendant Hyatt denies generally and specifically each and every allegation  
26 contained in Paragraph 90 of the Complaint.

27  
28

**ANSWER TO FOURTH CAUSE OF ACTION**

(Infliction of Emotional Distress)

**ANSWER TO COUNT 1**

91. Defendant Hyatt asserts that no response is required to Paragraph 91 of the Complaint because this count is alleged against Individual Defendants alone.

92. Defendant Hyatt asserts that no response is required to Paragraph 92 of the Complaint because this count is alleged against Individual Defendants alone.

93. Defendant Hyatt asserts that no response is required to Paragraph 93 of the Complaint because this count is alleged against Individual Defendants alone.

94. Defendant Hyatt asserts that no response is required to Paragraph 94 of the Complaint because this count is alleged against Individual Defendants alone.

95. Defendant Hyatt asserts that no response is required to Paragraph 95 of the Complaint because this count is alleged against Individual Defendants alone.

**ANSWER TO COUNT 2 (Against Defendant Hyatt Only)**

96. Defendant Hyatt has no information or belief on the subject sufficient to enable it to answer the allegations contained in Paragraph 96 of the Complaint, and basing its denial on that ground, denies generally and specifically each and every allegation contained in said paragraph, except that Defendant denies that it failed to conduct a thorough, adequate and impartial investigation of any complaint made at any time, and further asserts that Plaintiff never made any harassment allegations of any kind after October 2001. Defendant Hyatt also asserts that any allegations regarding harassment or hostile work environment are barred because Plaintiff failed to exhaust her administrative remedies with respect to any such allegations.

96(a). Defendant Hyatt has no information or belief on the subject sufficient to enable it to answer the allegations contained in Paragraph 96(a) of the Complaint, and basing its denial on that ground, denies generally and specifically each and every allegation contained in said paragraph, and further specifically denies that its Human Resources personnel were “ill-equipped” to investigate a complaint by any employee, including Plaintiff. Defendant Hyatt also asserts that any allegations regarding harassment or hostile work environment are barred because

1 Plaintiff failed to exhaust her administrative remedies with respect to any such allegations.

2 96(b). Defendant Hyatt denies generally and specifically each and every allegation  
3 contained in Paragraph 96(b) of the Complaint, except that Defendant Hyatt admits that Plaintiff  
4 was suspended pending investigation and later terminated effective May 24, 2005.

5 97. Defendant Hyatt has no information or belief on the subject sufficient to enable it  
6 to answer the allegations contained in Paragraph 97 of the Complaint, and basing its denial on  
7 that ground, denies generally and specifically each and every allegation contained in said  
8 paragraph, except that Defendant Hyatt specifically denies that Plaintiff was “left on her own to  
9 learn the new challenges of her job by herself,” inasmuch as all engineers in the hotel received  
10 extensive training, including and especially Plaintiff.

11 98. Defendant Hyatt denies generally and specifically each and every allegation  
12 contained in Paragraph 98 of the Complaint, except that Defendant has no information or belief  
13 on the subject sufficient to enable it to answer the last clause of Paragraph 98. Defendant Hyatt  
14 asserts that any allegations regarding harassment or hostile work environment are barred because  
15 Plaintiff failed to exhaust her administrative remedies with respect to any such allegations.

16 99. Defendant Hyatt denies generally and specifically each and every allegation  
17 contained in Paragraph 99 of the Complaint.

18 100. Defendant Hyatt denies generally and specifically each and every allegation  
19 contained in Paragraph 100 of the Complaint.

## 20 **ANSWER TO FIFTH CAUSE OF ACTION**

21 (Failure to Take Steps to Prevent Discrimination) (Against Defendant Hyatt only)

22 101. Answering Paragraph 101 of the Complaint wherein Plaintiff incorporates  
23 Paragraphs 1 through 100 of the Complaint (including the duplicative-numbered paragraphs),  
24 Defendant Hyatt realleges and hereby incorporates by this reference its responses to said  
25 paragraphs as though fully set forth herein.

26 102. Defendant Hyatt has no information or belief on the subject sufficient to enable it  
27 to answer the allegations contained in Paragraph 102 of the Complaint, and basing its denial on  
28 that ground, denies generally and specifically each and every allegation contained in said

1 paragraph, except that Defendant Hyatt asserts that no response is required to said paragraph.

2 103. Defendant Hyatt denies generally and specifically each and every allegation  
3 contained in Paragraph 103 of the Complaint. Defendant Hyatt also asserts that any allegations  
4 regarding harassment or hostile work environment are barred because Plaintiff failed to exhaust  
5 her administrative remedies with respect to any such allegations.

6 104. Defendant Hyatt denies generally and specifically each and every allegation  
7 contained in Paragraph 104 of the Complaint. Defendant Hyatt also asserts that any allegations  
8 regarding harassment or hostile work environment are barred because Plaintiff failed to exhaust  
9 her administrative remedies with respect to any such allegations.

10 105. Defendant Hyatt denies generally and specifically each and every allegation  
11 contained in Paragraph 105 of the Complaint. Defendant Hyatt also asserts that any allegations  
12 regarding harassment or hostile work environment are barred because Plaintiff failed to exhaust  
13 her administrative remedies with respect to any such allegations.

14 106. Defendant Hyatt has no information or belief on the subject sufficient to enable it  
15 to answer the allegations contained in Paragraph 106 of the Complaint, and basing its denial on  
16 that ground, denies generally and specifically each and every allegation contained in said  
17 paragraph, except that Defendant Hyatt admits that Plaintiff filed a complaint with the  
18 Department of Fair Employment & Housing on May 16, 2006 alleging that she was fired because  
19 of her sex, age, race/color, national origin/ancestry, and sexual orientation. Defendant Hyatt  
20 asserts that any allegations regarding harassment or hostile work environment are barred because  
21 Plaintiff failed to exhaust her administrative remedies with respect to any such allegations.

22 107. Defendant Hyatt denies generally and specifically each and every allegation  
23 contained in Paragraph 107 of the Complaint.

24 108. Defendant Hyatt denies generally and specifically each and every allegation  
25 contained in Paragraph 108 of the Complaint.

26 109. Defendant Hyatt denies generally and specifically each and every allegation  
27 contained in Paragraph 109 of the Complaint.

28



**RECOVERY**

Defendant Hyatt further specifically denies that Plaintiff has suffered any injury or damages of any kind attributable in any way to any act or omission on the part of Defendant Hyatt or any other person or entity.

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

(Failure to State Facts Sufficient to Constitute a Cause of Action)

As a first and separate defense, and solely by way of an alternative defense, not to be construed as an admission, Defendant Hyatt alleges that the Complaint and each cause of action (and count) therein fails to state facts sufficient to constitute a cause of action against Defendant Hyatt.

**SECOND AFFIRMATIVE DEFENSE**

(Preemption by Federal Labor Law)

As a second and separate defense, and solely by way of an alternative defense, not to be construed as an admission, Defendant Hyatt alleges that to the extent that Plaintiff seeks recovery for alleged injury caused by alleged actions that were governed by the terms of the collective bargaining agreement between the Hyatt Regency San Francisco Airport and Stationary Engineers Union, Local 39 (of which Plaintiff was a member), the exclusive remedy for such an injury, if any, is governed by the mandatory arbitration clause of the collective bargaining agreement pursuant to 29 U.S.C. § 185.

**THIRD AFFIRMATIVE DEFENSE**

(No Basis for Compensatory and/or Emotional Distress Damages)

As a third and separate defense, and solely by way of an alternative defense, not to be construed as an admission, Defendant Hyatt alleges that Plaintiff has failed to state facts sufficient to provide a legal or factual basis to award compensatory damages or damages for emotional distress to Plaintiff under any of the causes of action alleged in the Complaint.

**FOURTH AFFIRMATIVE DEFENSE**

(No Basis for Punitive Damages)

As a fourth and separate defense, and solely by way of an alternative defense, not to be construed as an admission, Defendant Hyatt alleges that Plaintiff has failed to state facts sufficient to provide a legal or factual basis to award punitive damages under any causes of action alleged in the Complaint, and further allege that excessive punitive damage awards violate the due process clause of the United State Constitution and California Constitution.

**FIFTH AFFIRMATIVE DEFENSE**

(Punitive Damages Bar)

As a fifth and separate defense, and solely by way of an alternative defense, not to be construed as an admission, Defendant Hyatt alleges that any claim for punitive damages is barred by California Civil Code Section 3294(b).

**SIXTH AFFIRMATIVE DEFENSE**

(No Basis for Attorneys' Fees)

As a sixth and separate defense, and solely by way of an alternative defense, not to be construed as an admission, Defendant Hyatt alleges that Plaintiff has failed to state facts sufficient to provide legal or factual basis to award attorneys' fees or costs to Plaintiff.

**SEVENTH AFFIRMATIVE DEFENSE**

(Failure to Exhaust Administrative Remedies)

As a seventh and separate defense, and solely by way of an alternative defense, not to be construed as an admission, Defendant Hyatt alleges that Plaintiff's causes of action, or parts therein, are barred to the extent that Plaintiff failed to exhaust her administrative remedies.

**EIGHTH AFFIRMATIVE DEFENSE**

(Privilege/Justification)

As an eighth and separate defense, and solely by way of an alternative defense, not to be construed as an admission, Defendant Hyatt alleges that its conduct toward Plaintiff, if any, was privileged and/or justified.

**NINTH AFFIRMATIVE DEFENSE**

(No Malice/Good Faith Belief)

As a ninth and separate defense, and solely by way of an alternative defense, not to be construed as an admission, Defendant Hyatt alleges that at all time and places mentioned in the Complaint, Defendant Hyatt acted reasonably, with due care, without malice, and with good faith belief in the propriety of its conduct at all times material to the allegation in the Complaint.

**TENTH AFFIRMATIVE DEFENSE**

(Barred by Workers' Compensation)

As a tenth and separate defense, and solely by way of an alternative defense, not to be construed as an admission, Defendant Hyatt alleges that to the extent that Plaintiff seeks recovery for alleged pain, suffering, mental anguish and/or emotional distress, then, pursuant to California Labor Code Section 3601, the exclusive remedy for such injury, if any, is governed by the California Workers' Compensation Act, California Labor Code Sections 3200 *et seq.*

**ELEVENTH AFFIRMATIVE DEFENSE**

(Plaintiff Unreasonably Failed to Utilize Procedures to Prevent Harassment/Discrimination)

As an eleventh and separate defense, and solely by way of an alternative defense, not to be construed as an admission, Defendant Hyatt alleges that it exercised reasonable care to prevent and correct promptly any harassing and/or discriminatory behavior in the workplace, including the implementation of a policy prohibiting harassment, which was in place at all relevant times and known by the Plaintiff, and that if any harassment and/or discrimination occurred, which Defendant Hyatt denies, Plaintiff unreasonably failed to use any of the preventative and corrective measures provided by Defendant Hyatt.

**TWELFTH AFFIRMATIVE DEFENSE**

(Avoidable Consequences)

As a twelfth and separate defense, and solely by way of an alternative defense, not to be construed as an admission, Defendant Hyatt alleges that it exercised reasonable care to prevent and promptly correct any purported harassing or discriminatory behavior, and that if any harassment or discrimination of Plaintiff occurred (which Defendant Hyatt denies), Plaintiff

1 unreasonably failed to take advantage of any preventive or corrective opportunities provided by  
2 Defendant Hyatt or to avoid harm otherwise, which would have prevented at least some of the  
3 alleged injury suffered by Plaintiff.

4 **THIRTEENTH AFFIRMATIVE DEFENSE**

5 (Failure to Mitigate)

6 As a thirteenth and separate defense, and solely by way of an alternative defense, not to be  
7 construed as an admission, Defendant Hyatt alleges that Plaintiff's damages, if any, are barred  
8 because she failed to mitigate damages, and any recovery of damages, if there be any, should be  
9 reduced in the amount by which she should have mitigated those alleged damages.

10 **FOURTEENTH AFFIRMATIVE DEFENSE**

11 (Failure to Complain)

12 As a fourteenth and separate defense, and solely by way of an alternative defense, not to  
13 be construed as an admission, Defendant Hyatt alleges that to the extent that Plaintiff failed to  
14 complain about certain acts or omissions alleged in the Complaint, such failure to complain  
15 constitutes a bar to Plaintiff's recovery of any damages.

16 **FIFTEENTH AFFIRMATIVE DEFENSE**

17 (Statute of Limitations)

18 As a fifteenth and separate defense, and solely by way of an alternative defense, not to be  
19 construed as an admission, Defendant Hyatt alleges that the causes of action alleged against it, or  
20 parts therein, are barred by the applicable statute of limitations, including but not limited to those  
21 set forth in California Gov't Code Section 12960 and California Code of Civil Procedure Section  
22 340.

23 **SIXTEENTH AFFIRMATIVE DEFENSE**

24 (Laches)

25 As a sixteenth and separate defense, and solely by way of an alternative defense, not to be  
26 construed as an admission, Defendant Hyatt alleges that Plaintiff's delay in asserting her alleged  
27 claims bars her claims set forth in the Complaint by the doctrine of laches.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

(Waiver/Estoppel/Unclean Hands)

As a seventeenth and separate defense, and solely by way of an alternative defense, not to be construed as an admission, Defendant Hyatt alleges that Plaintiff's recovery in this action is barred by the doctrines of waiver, estoppel, and unclean hands in connection with her job performance and conduct.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

(No Injury to Plaintiff)

As an eighteenth and separate defense, and solely by way of an alternative defense, not to be construed as an admission, Defendant Hyatt alleges that Plaintiff has not suffered any injury, damage, loss or harm due to any actions by the Individual Defendants.

**NINETEENTH AFFIRMATIVE DEFENSE**

(Consent)

As a nineteenth affirmative defense, and solely by way of an alternative defense, not to be construed as an admission, Defendant Hyatt alleges that Plaintiff consented to and approved the acts and omissions about which Plaintiff now complains. Accordingly, Plaintiff is now barred from pursuing this action.

**TWENTIETH AFFIRMATIVE DEFENSE**

(No Wrongful Conduct By Managing Agents)

As a twentieth affirmative defense, and solely by way of an affirmative defense, not to be construed as an admission, Defendant Hyatt alleges that at all times mentioned in the Complaint, Plaintiff has not alleged and/or cannot demonstrate any wrongful conduct by any managing agents of Hyatt, and Defendant Hyatt further alleges that it never ratified or condoned any unlawful or tortious conduct of any employee or individual at Hyatt.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

(Causation)

As a twenty-first and separate defense, and solely by way of an alternative defense, not to be construed as an admission, Defendant Hyatt alleges that none of the injuries alleged in the

Complaint were proximately caused by any of the conduct of Hyatt as alleged in the Complaint.

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

(Legitimate Business Reasons)

As a twenty-second and separate defense, and solely by way of an alternative defense, not to be construed as an admission, Defendant Hyatt alleges that it had legitimate business reasons, unrelated to any classification protected under the Fair Employment & Housing Act, for any employment actions it took with regard to Plaintiff.

**RESERVATION OF DEFENSES**

Defendant Hyatt reserves the right to raise additional affirmative defenses as they become known during the course of litigation.

WHEREFORE, Defendant Hyatt prays for judgment as follows:

1. That judgment be entered in favor of Defendant Hyatt and that Plaintiff take nothing by her Complaint;
2. That the Complaint herein be dismissed;
3. That Defendant Hyatt be awarded its costs of suit incurred in the defense of this action, including attorneys' fees; and
4. That Defendant Hyatt be awarded such other and further relief as the Court deems proper.

Dated: March 21, 2008

FOLGER LEVIN & KAHN LLP

/s/ *Lisa M. van Krieken*

Lisa M. van Krieken  
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Hyatt Corporation dba Hyatt Regency San Francisco  
Airport, Jimmy Flores, Ron Gray, Tom Phipps and  
Jose Reyes

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